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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/638,650 Confirmation No. 9848
Applicant: Law Enforcement Services, Inc.
For: **SYSTEM AND METHOD FOR ACQUIRING AND ANALYZING
PERSONAL HISTORY INFORMATION**
Filed: August 14, 2000
TC/AU: 3626
Examiner: Carolyn M. Bleck

Docket No.: L4590-004
Customer No.: 30166

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



RECEIVED
MAR 22 2004
GROUP 3600

Sir:

DECLARATION OF SHELLEY W. SPILBERG, PH.D. UNDER 35 U.S.C. 132

1. My name is Shelley W. Spilberg and I am employed as the Senior Personnel Selection Consultant at the Commission on Peace Officer Standards and Training (POST), located in Sacramento, California.
2. I am responsible for the creation and maintenance of the POST Medical Screening Manual for California Law Enforcement and the POST Psychological Screening Manual and serve as the POST expert on the Americans with Disabilities Act and related federal and state statutes. My resume is attached to this declaration.
3. It is my understanding that this declaration will be submitted in connection with the above-referenced patent application.
4. It is well known that, in the field of employment applicant screening, there two basic approaches to the problem. One the one hand, applicants can be "screened in" by predicting whether a particular applicant is likely to be successful in a particular job; on the other

hand, applicants can be “screened out” by predicting whether a particular applicant is likely to fail in a particular job. These two approaches to employment applicant screening manifest themselves in two fundamentally different types of instruments: qualifying instruments or disqualifying instruments. As might be expected, a qualifying instrument is used to “screen in” an applicant and a disqualifying instrument is used to “screen out” an applicant.

5. A qualifying instrument operates under the principle that applicants most likely to succeed in a particular job are screened in. Often applicants taking a qualifying instrument have already been administered a disqualifying instrument, and have not been screened out by the disqualifying instrument. The qualifying instrument, therefore, will not only predict the likelihood of a particular applicant’s job success, but the likelihood of job success relative to other applicants in a pool. Qualifying tests typically include basic skills tests, cognitive ability and aptitude tests, physical ability tests and personality test indicators.

6. A disqualifying instrument is operates under the principle that applicants who are likely to fail, by exhibiting dysfunctional job behaviors, for example, are screened out of the selection pool. Often, disqualifying instruments are used first to screen out applicants that are likely to be unsuitable for a particular job. Applicants who are not screen out, are then given a qualifying instrument to determine relative likelihood of job success. Disqualifying instruments may include drug tests, medical exams, and honesty and integrity tests.

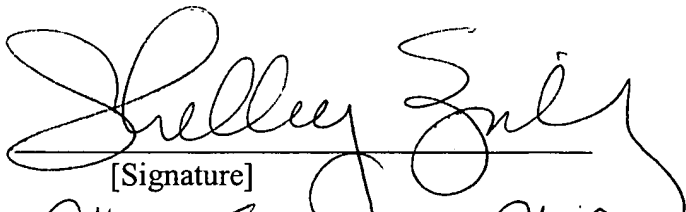
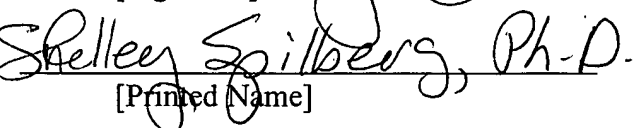
7. I have read the entire contents of U.S. Patent No. 5,551,880 to Bonstetter. It is my professional opinion that Bonstetter is describing and claiming a classic “qualifying instrument.” This opinion is based on multiple references to the objective of predicting job success for an applicant for employment. Like all other qualifying instruments, Bonstetter attempts to “screen in” a pool of job applicants based on an applicants’ behavior and values. The

instrument then ranks each applicant based on a scoring mechanism that accounts for behavior and values and the interplay between the two. Bonstetter of course, is unsuitable for use as a disqualifying instrument because, it is a system for predicting potential of success of an individual for a particular job or task and it is further described as evaluating the applicant's responses to the standards to predict success of a perspective employee or to improve performance of a current employee. This instrument does not claim to predict dysfunctional behavior for use in screening out or disqualifying applicants.

8. I have read the entire contents of Sarchione, Charles, D., Cuttler, Michael J., Muchinsky, Paul L., and Nelson-Gray, Rosemary O., "Prediction of Dysfunctional Job Behaviors Among Law Enforcement Officers," *Journal of Applied Psychology*, Vol. 83, No. 6 (1998) ("Sarchione"), and it is my professional opinion that the instrument described in Sarchione is a classic disqualifying instrument. This is based on several references in Sarchione to "dysfunctional job behaviors" and the statement that, with respect to dysfunctional job behaviors, "[t]he intent of the selection process would be to minimize their frequency in the population of law enforcement officers." Sarchione at p. 905-06.

9. Finally, as one experienced in the field of employment applicant screening, if I were seeking to improve the instrument described in Bonstetter so as to increase the accuracy of predicting job success, I would not consider disqualifying instruments, such as the instrument disclosed in Sarchione. Conversely, if I were seeking to improve the instrument described in Sarchione so as to increase the accuracy of predicting dysfunctional job behaviors, I would not consider qualifying instruments, such as the instrument described in Bonstetter. This is because, as discussed above, qualifying and disqualifying instruments have fundamentally different principles of operation. This is true now and would have been true since at least 1970.

This is the 1st day of March 2004.


[Signature]

[Printed Name]

Shelley Weiss Spilberg, Ph.D.

Education:

- Ph.D. University of Maryland, College Park, 1987
Industrial/Organizational Psychology
- M.A. University of Maryland, College Park, 1980
Industrial/Organizational Psychology
- B.A. University of California, Berkeley, 1975
Psychology

Senior Personnel Selection Consultant (June 1989 - Present)

Commission on Peace Officer Standards and Training; Sacramento, California.

Responsible for the creation and maintenance of the *POST Medical Screening Manual for California Law Enforcement* and the *POST Psychological Screening Manual*. Serves as the POST expert on the Americans with Disabilities Act and related federal and state statutes..

Human Resources Analyst (January 1989 - June, 1989)

Cooperative Personnel Services; Sacramento, California

Responsible for developing and implementing criteria and procedures leading to the classification and selection of employees for a variety of highly technical positions in the Information Sciences Department of the Rancho Seco Nuclear Power Plant.

Training and Assessment Specialist (February 1982 - November 1988)

United States Nuclear Regulatory Commission; Washington, D.C.

Responsible for developing examination procedures, training programs, regulations and regulatory guidance associated with the nuclear power plant operator licensing examination. Conducted and managed projects to establish examination validity, reliability and other psychometric properties.

Consultant and Research Analyst (1978 - 1982)

University of Maryland (1/81 - 2/82). Research analyst on a project to develop a new faculty evaluation system for the Division of Behavioral and Social Sciences.

Air Force Office of Scientific Research (1/80 - 12/81). Research analyst on project to assess the impact of summer programs designed to orient minority youths to the field of engineering.

University of Maryland (7/80 - 7/81). Research analyst on organizational diagnosis and intervention project for the University's Physical Plant.

Safeway Stores, Inc. (7/79 - 7/81). Performed study to determine the individual and interactive contribution of job training and employee perceptions of the organizational reward system on food clerk performance.

Federal Trade Commission (8/78 - 6/80). Research analyst on project to develop new selection systems for a variety of professional positions.

Anne Arundel County Police Department (3/79 - 9/80). Research analyst on a project to develop new performance evaluation measures for police sergeants.

Personnel Research Associate (July 1975 - July 1977)
Safeway Stores, Inc., Oakland, California

Conducted job/task analyses; developed performance evaluation systems and interviewer training programs; conducted training workshops, validation studies; served as an assessment center evaluator; administered, analyzed and interpreted personnel test batteries.

Professional Associations:

American Psychological Association
Society for Industrial/Organizational Psychology
Personnel Testing Council

Selected Bibliography:

Goldberg, R.L.; Weyers, S.G.; Spilberg, S.W. (1996). Medical Screening Manual for California Law Enforcement. Commission on Peace Officer Standards and Training, Sacramento, California.

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Spilberg, S.W. (1987). A judgment analysis approach to the content validation of work sample simulation examinations. Unpublished doctoral dissertation, University of Maryland.

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Weiss, S.J. (1980). The effect of employees= reward perceptions on the training performance - job performance relationship. Unpublished masters thesis, University of Maryland.

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Weiss, S.J. (1978). Readability analyses and issues related to the Supervisory Profile Record. Technical Report to Richardson, Bellows, Henry & Co., Washington, D.C.